

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

_____)	
UNITED STATES OF AMERICA,)	
PLAINTIFF.)	CASE NO. 10CR2803-DMS
)	
)	SAN DIEGO, CALIFORNIA
)	FRIDAY, JUNE 28, 2013
JOHN MALONEY,)	11:00 A.M. CALENDAR
DEFENDANT.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

COUNSEL APPEARING:

FOR PLAINTIFF: LAURA E. DUFFY,
UNITED STATES ATTORNEY
BY: STEPHEN FREDERICK MILLER
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FOR DEFENDANT: JOHN C. LEMON, ESQ.
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REPORTED BY: LEE ANN PENCE
OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
333 WEST BROADWAY, ROOM 1393
SAN DIEGO, CALIFORNIA 92101

1 SAN DIEGO, CALIFORNIA - FRIDAY, JUNE 28, 2013 - 11:20 A.M.

2 * * *

3 **THE CLERK:** NO. 8 ON CALENDAR, CASE NO. 10CR2803,
4 UNITED STATES OF AMERICA VERSUS JOHN MALONEY; ON FOR MOTION
5 HEARING.

6 **MR. MILLER:** STEVE MILLER FOR THE UNITED STATES.

7 **THE COURT:** GOOD MORNING.

8 **MR. LEMON:** GOOD MORNING, YOUR HONOR. JOHN LEMON
9 FOR MR. MALONEY. HE IS IN CUSTODY IN THE BUREAU OF PRISONS AT
10 I BELIEVE TAFT FCI, AND HAS WAIVED HIS APPEARANCE TODAY.

11 **THE COURT:** GOOD MORNING.

12 I HAVE READ THE BRIEFING. AND IT SEEMED TO ME THAT
13 THE KEY ISSUE HERE IS THE SECOND ELEMENT, AND THAT IS THAT
14 UNDER THE LAW THAT WAS WELL DISCUSSED IN YOUR BRIEFING, MR.
15 LEMON, THE COURT SHOULD CONTINUE TO DETAIN MR. MALONEY
16 UNLESS -- AND THEN THE NOT A FLIGHT RISK OR DANGER,
17 SUBSTANTIAL QUESTION OF LAW AND EXCEPTIONAL REASON.

18 THE SECOND AREA, SUBSTANTIAL QUESTION OF LAW LIKELY
19 TO RESULT IN A REVERSAL OR NEW TRIAL HAS A HARMLESS ERROR
20 FACTOR IN IT. AND HERE IT SEEMS TO ME THAT THERE ARE
21 ARGUMENTS TO BE MADE THAT THERE IS NO ERROR. I UNDERSTAND THE
22 ARGUMENT THAT THE ANALYSIS IS WHETHER THERE IS A SUBSTANTIAL
23 QUESTION. SO IF WE GO TO THE HARMLESS ERROR ANALYSIS HERE THE
24 TENTATIVE WOULD BE TO DENY THE MOTION FOR BOND. AND IN THE
25 2-1 PANEL DISCUSSION THE MAJORITY DISCUSSES THE HARMLESS ERROR

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1 ISSUE, AND I AM IN AGREEMENT WITH THAT ANALYSIS.

2 OBVIOUSLY, I SAT AT THE TRIAL, AND IN MY VIEW THE
3 EVIDENCE WAS STRONG. THERE WAS NO DOUBT IN MY MIND THAT MR.
4 MALONEY WAS GUILTY. HE IS A VERY NICE PERSON AND HE IS A GOOD
5 MAN IN MANY, MANY WAYS OUTSIDE OF THIS ONE INCIDENT, BUT JUST
6 LOOKING AT THE FACTS OF THIS CASE IT SEEMS STRONG. LOOKING AT
7 IT FROM THE POINT OF VIEW THAT HE WAS DRIVING A TRACTOR
8 TRAILER WITH 321 POUNDS OF MARIJUANA IN IT. THE TRACTOR
9 TRAILER HAD HIS NAME ON IT, AND THE MARIJUANA WAS IMMEDIATELY
10 BEHIND HIM AND UNDERNEATH THE BED IN THE SLEEPER, ALL IN THE
11 CAB, SOME OF IT IN PLAIN VIEW, WOULD INDICATE THAT UNDER THE
12 SUBSTANTIAL QUESTION ANALYSIS, IT SEEMS TO ME, NO MATTER HOW
13 THE EN BANC PANEL COMES OUT, THERE IS A SIGNIFICANT HARMLESS
14 ERROR ISSUE HERE.

15 MR. LEMON.

16 **MR. LEMON:** YOUR HONOR, I THINK THE FIRST THING TO
17 EMPHASIZE IS THAT MR. MALONEY DOES NOT NEED TO SHOW THAT IT IS
18 MORE LIKELY THAN NOT THAT HE WILL GET A NEW TRIAL. THAT IS
19 NOT THE STANDARD. HE HAS TO SHOW THAT HE HAS A SUBSTANTIAL
20 QUESTION, WHICH CLEARLY HE DOES. THE NINTH CIRCUIT HAS TAKEN
21 THE CASE EN BANC. AND THEN LIKELY TO RESULT IN REVERSAL IS A
22 SEPARATE ELEMENT, AND IT REFERS TO THE TYPE OF RELIEF.

23 SO IS IT LIKELY -- I THINK THAT IS WHERE YOUR HONOR
24 HAS GONE, IS BASICALLY I THINK YOU ARE SAYING -- CORRECT ME IF
25 I AM WRONG -- THAT YOU THINK THAT EVEN IF MR. MALONEY WINS

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1 THAT THE EN BANC COURT IS GOING TO SAY IT WAS HARMLESS ERROR.

2 IS THAT ACCURATE?

3 **THE COURT:** WELL, I GUESS THAT'S THE SECOND
4 COMPONENT OF THE SUBSTANTIAL QUESTION AREA IS LIKELY TO RESULT
5 IN REVERSAL.

6 **MR. LEMON:** RIGHT. AND AGAIN, BUT LIKELY TO RESULT
7 IN REVERSAL ONLY DEFINES THE TYPE OF RELIEF REQUESTED.
8 OBVIOUSLY, I AM ASKING FOR A NEW TRIAL, SO HE DOESN'T HAVE TO
9 SHOW HE IS MORE LIKELY THAN NOT TO WIN, HE HAS TO SHOW IF HE
10 WINS HE IS PROBABLY GOING TO GET A NEW TRIAL.

11 SO I THINK THE ONLY WAY YOUR HONOR COULD DENY THE
12 BAIL REQUEST, BASED ON THAT ELEMENT, THAT SECOND STEP OF 3143,
13 IS IF YOU FIND THAT -- YOU BELIEVE THAT IF MR. MALONEY WINS
14 THE EN BANC COURT IS GOING TO FIND IT TO BE HARMLESS ERROR.

15 I THINK THE FACT THAT THEY GRANTED EN BANC REVIEW AT
16 ALL SUGGESTS THE CONTRARY; THAT CLEARLY A MAJORITY OF THE
17 NONRECUSED ACTIVE JUDGES AT THE NINTH CIRCUIT BELIEVE THAT
18 THIS IS A SIGNIFICANT ISSUE, OBVIOUSLY. BUT ALSO I THINK IT
19 IS JUST LESS LIKELY THAT THEY WOULD HAVE GRANTED EN BANC
20 REVIEW IF THEY ONLY INTENDED TO FIND A HARMLESS ERROR.

21 SO I GUESS, ALSO AS A PRACTICAL MATTER, I THINK I
22 GUESS JUST READING THE TEA LEAVES TO TRY TO PROJECT WHAT THESE
23 11 JUDGES, THAT WE DON'T EVEN KNOW WHO THEY ARE YET, ARE
24 NECESSARILY GOING TO SAY WELL, WE AGREE THAT THIS WAS
25 MISCONDUCT; HOWEVER UNDER THESE CIRCUMSTANCES IT IS HARMLESS.

1 THAT TYPE OF PROSPECTIVE ASSESSMENT I THINK IS
2 DIFFICULT TO MAKE.

3 ON THE OTHER HAND, ON THE OTHER SIDE OF THE SCALE WE
4 HAVE SOMEONE WHO HAS ALREADY DONE 26 MONTHS. HE IS MUCH LESS
5 LIKELY, OBVIOUSLY, TO FLEE NOW THAN HE WAS AT THE TIME BECAUSE
6 HE HAS SERVED ALMOST ALL -- HALF OF HIS SENTENCE. BY THE TIME
7 THIS CASE IS RESOLVED BY THE EN BANC COURT, AND IF THEY
8 RESOLVE IT IN HIS FAVOR AND ORDER A NEW TRIAL, IF HE STAYS IN
9 CUSTODY HE WILL HAVE SERVED HIS ENTIRE SENTENCE, OR VERY CLOSE
10 TO IT, BUT LIKELY HIS ENTIRE SENTENCE.

11 THE ARGUMENT IS IN SEPTEMBER AND THEN, AS YOUR HONOR
12 I AM SURE IS WELL AWARE, THEY CAN SIT ON THESE THINGS FOR WELL
13 OVER A YEAR. SO I THINK IT IS LIKELY THAT EVEN IF HE WINS HE
14 WILL HAVE SERVED HIS ENTIRE SENTENCE. SO REALLY, HE IS THE
15 ONLY ONE THAT CAN BE PREJUDICED.

16 ONE OF THE THINGS THAT IS -- ONE OF THE
17 EXTRAORDINARY CIRCUMSTANCES THAT WAS IDENTIFIED BY THE GARCIA
18 COURT IN FAVOR OF LETTING SOMEONE OUT ON BAIL IS THE QUALITY
19 OF THE QUESTION THAT IS UP FOR REVIEW. AND CERTAINLY AT THE
20 TIME THAT THE VERDICT CAME BACK, I DIDN'T HAVE ANY EXPECTATION
21 THAT THIS CASE WOULD RESULT IN A PUBLISHED OPINION, MUCH LESS
22 AN EN BANC REHEARING. BUT THE FACT IS IT DID. SO THAT IS AN
23 EXTRAORDINARY CIRCUMSTANCE WHICH THE GARCIA COURT SAYS
24 MILITATES TOWARDS -- TOWARDS RELEASE BECAUSE HE COULD VERY
25 WELL END UP SERVING HIS ENTIRE SENTENCE BEFORE THE CASE IS

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1 DECIDED.

2 **THE COURT:** THE ENTIRE TENOR, THOUGH, OF THE EN BANC
3 GRANT IS FOCUSING ON MR. MILLER. THEY ARE LOOKING AT
4 PROSECUTORIAL CONDUCT. IT DOESN'T HAVE ANYTHING TO DO WITH
5 THE MERITS, AND THAT'S WHY I THINK THE HARMLESS ERROR --

6 **MR. LEMON:** WE DON'T ACTUALLY KNOW THAT, YOUR HONOR.
7 THE EN BANC GRANT DOESN'T IDENTIFY THE ISSUE. IN FACT THEY
8 MIGHT WANT TO HEAR ABOUT MY ARGUMENT ABOUT HE SHOULD HAVE
9 GOTTEN AN INSTRUCTION ON CHARACTER. I MEAN, THERE IS A
10 CIRCUIT SPLIT ON THAT AS WELL. SO I AM ACTUALLY PREPARING TO
11 ARGUE BOTH OF THOSE ISSUES, BECAUSE THEY DIDN'T IDENTIFY WHAT
12 THEY WANT TO HEAR.

13 AT THIS POINT ALL WE KNOW IS THAT THEY WANT TO
14 REVIEW THE CASE EN BANC. IT IS A SUBSTANTIAL ISSUE THAT IS
15 PRESENTED. AND I DON'T SEE HOW, PROSPECTIVELY, WE CAN SAY
16 EVEN IF MR. MALONEY WINS ON THE MERITS HE IS NOT GOING TO GET
17 A NEW TRIAL BECAUSE ANY ERROR WAS HARMLESS. I JUST DON'T
18 THINK THAT WE CAN SAY THAT WITH ANY CONFIDENCE.

19 **THE COURT:** GOING TO THE MERITS AGAIN, WHICH I THINK
20 IS THE HARMLESS ERROR ANALYSIS. EXHIBIT K, THAT WAS A
21 PERSONAL PROPERTY LOG AT THE TIME OF BOOKING, AM I CORRECT?

22 **MR. LEMON:** I HAVEN'T LOOKED AT THE EXHIBITS LATELY,
23 BUT I THINK THAT IS WHAT -- I THINK I KNOW WHAT YOU ARE
24 REFERRING TO.

25 **THE COURT:** IT IDENTIFIED THAT MR. MALONEY HAD A

1 \$1.27 ON HIS PERSON, THAT EXHIBIT.

2 **MR. LEMON:** THAT RINGS A BELL.

3 **THE COURT:** DO YOU HAVE ANY OTHER INFORMATION ABOUT
4 IT?

5 **MR. LEMON:** ABOUT THAT EXHIBIT?

6 **THE COURT:** YES.

7 **MR. LEMON:** MY RECOLLECTION OF THE JURY NOTE -- IS
8 THAT WHAT YOUR HONOR IS REFERRING TO, WHEN THEY ASKED ABOUT AN
9 EXHIBIT? I HAD USED AN EXHIBIT TO IMPEACH THE AGENT ON A
10 TOTALLY UNRELATED POINT. THE JURY THEN SENT BACK A NOTE
11 SAYING THAT THEY WANTED TO LOOK AT THAT PROPERTY INVENTORY.

12 AT THAT POINT I AGAIN RENEWED MY MOTION FOR A
13 MISTRIAL BASED ON THE FACT THAT I BELIEVED THE JURY WAS
14 LOOKING FOR PRIVATE SANTIAGO'S LUGGAGE FROM THE FILM
15 A FEW GOOD MEN. SO THAT WAS THE ARGUMENT THAT I MADE AT THE
16 TIME, I REMEMBER THAT. I THINK THE JURY WAS LOOKING FOR MR.
17 MALONEY'S LUGGAGE.

18 **THE COURT:** THE MINUTES INDICATE THAT EXHIBIT K IS A
19 PERSONAL PROPERTY INVENTORY --

20 **MR. LEMON:** RIGHT.

21 **THE COURT:** -- FROM DEFENDANT'S ARREST.

22 **MR. LEMON:** MY RECOLLECTION IS THAT I HAD USED THAT
23 TO EITHER IMPEACH THE AGENT OR REFRESH HIS RECOLLECTION WITH
24 SOMETHING ON AN UNRELATED POINT. BUT BECAUSE I HAD IDENTIFIED
25 IT AS A PERSONAL PROPERTY INVENTORY THE JURY WANTED TO SEE IT

1 BECAUSE OF THE GOVERNMENT'S ARGUMENT IN ITS REBUTTAL CLOSING.

2 **THE COURT:** MR. MILLER, DO YOU HAVE A RECOLLECTION
3 OF WHAT EXHIBIT K HAD WITHIN IT?

4 **MR. MILLER:** NO.

5 **THE COURT:** I DO KNOW IT IS A PERSONAL PROPERTY
6 INVENTORY, BUT DID IT IDENTIFY ANYTHING OTHER THAN A \$1.27?

7 **MR. MILLER:** THAT I DO NOT REMEMBER. SINCE IT WAS A
8 DEFENSE EXHIBIT, IT WAS NOT ENTERED INTO EVIDENCE, I HAVE NO
9 SPECIFIC MEMORY OF THAT.

10 BUT ALSO KEEP IN MIND, IF THEY WERE LOOKING FOR
11 PRIVATE SANTIAGO'S LUGGAGE, THAT THIS WAS AN EITHER/OR
12 ARGUMENT, THAT IF THE DEFENDANT WAS TELLING THE TRUTH THAT HE
13 TOOK THIS TRIP THEN HE WOULD HAVE HAD LUGGAGE. AND IF THERE
14 IS NO LUGGAGE THEN HE IS GUILTY.

15 BUT IF HE TESTIFIED I TOOK THIS TRIP BUT SOMEONE
16 SNUCK THE MARIJUANA INTO THE TRUCK THAT HAD MY NAME ON THE
17 SIDE, AND I HAD LUGGAGE; THEN HE WAS GUILTY BECAUSE THE PERSON
18 WHO SNUCK IT IN WOULD HAVE A REASONABLE EXPECTATION THAT WHERE
19 WOULD MR. MALONEY PUT THE LUGGAGE? RIGHT ON THE SHELF WHERE
20 THE MARIJUANA WAS.

21 SO IF IT WAS -- IF THERE WAS LUGGAGE HE WOULD HAVE
22 BEEN GUILTY; IF THERE WAS NO LUGGAGE HE WOULD HAVE BEEN
23 GUILTY. SO IT IS AN EITHER/OR ARGUMENT.

24 **THE COURT:** ALL RIGHT.

25 **MR. MILLER:** AND I HAD NOT EVEN THOUGHT OF EXHIBIT K

1 SINCE IT WAS USED AT TRIAL.

2 **THE COURT:** AT THE TIME OF TRIAL THERE WAS A REQUEST
3 FOR SURREBUTTAL, AND I DECLINED TO ALLOW THAT, AND THERE WERE
4 A COUPLE OF REASONS THAT WERE DISCUSSED. ONE IS THAT THERE
5 WAS A PROFFER AS TO WHAT MR. MALONEY WOULD TESTIFY TO, SO THE
6 REBUTTAL ARGUMENT WOULD BE BASED ON A PROFFER AS OPPOSED TO
7 ACTUAL TESTIMONY. AND THERE WAS DISCUSSION IN THE RECORD AND
8 THAT WAS --

9 **MR. LEMON:** YOUR HONOR, IF I COULD JUST ADDRESS THAT
10 DISCRETE POINT BRIEFLY.

11 **THE COURT:** YES.

12 **MR. LEMON:** I REMEMBER WE WERE AT SIDEBAR AND I DID
13 MAKE A PROFFER AS TO WHAT MR. MALONEY WOULD HAVE SAID ABOUT
14 THE LUGGAGE, AND YOUR HONOR SAID WELL, THAT IS NOT A PROPER
15 BASIS FOR SURREBUTTAL.

16 AND THEN I RESPONDED: AND I WOULDN'T MAKE THAT
17 ARGUMENT IN SURREBUTTAL. THE ARGUMENT I WOULD MAKE IS THAT
18 MR. MALONEY TESTIFIED AND THE GOVERNMENT COULD HAVE ASKED HIM
19 ABOUT THE LUGGAGE IF THEY WANTED TO.

20 SO I WANT TO BE CLEAR ON THAT. I NEVER WANTED TO
21 PROFFER TO THE JURY WHAT MR. MALONEY WOULD HAVE SAID ABOUT
22 LUGGAGE HAD HE BEEN ASKED ABOUT IT. THAT WAS NEVER THE POINT
23 OF THAT.

24 **THE COURT:** THAT'S NOT MY RECOLLECTION, BUT THE
25 RECORD WILL --

1 **MR. LEMON:** RIGHT. I BELIEVE -- IN FACT, I AM
2 ALMOST CERTAIN IT IS IN THE TRANSCRIPT BECAUSE I REMEMBER THAT
3 COMING UP WHEN THE CASE WAS ON APPEAL AND I FOUND IT.

4 **THE COURT:** THE OTHER MATTER WAS THIS, AND THAT IS
5 THAT I FELT THAT MR. MILLER'S CLOSING WAS PROPER AND A FAIR
6 REBUTTAL ARGUMENT. THAT IT WAS TETHERED TO THE EVIDENCE IN
7 THE RECORD AND INFERENCES THAT COULD PROPERLY BE DRAWN FROM
8 THAT EVIDENCE BECAUSE MR. MALONEY DID TESTIFY THAT HE HAD BEEN
9 ON THE ROAD FOR THREE DAYS. THERE WAS THIS EXHIBIT K THAT HAD
10 THIS PERSONAL PROPERTY INVENTORY. AND IT SEEMED TO ME THAT
11 THOSE ARE FAIR INFERENCES TO MAKE THE ARGUMENT THAT THERE
12 OUGHT TO HAVE BEEN LUGGAGE IDENTIFIED, AND IT MAY HAVE BEEN
13 IDENTIFIED IN EXHIBIT K. SO ULTIMATELY IT SEEMED TO ME TO BE
14 WITHIN THE FAIR BOUNDS OF ARGUMENT.

15 OBVIOUSLY THERE IS A DISSENT AND THERE IS AN EN BANC
16 REVIEW. I THINK IT IS GOING TO BE FOCUSED ON THAT QUESTION,
17 WHETHER THE REBUTTAL ARGUMENT WAS FAIR OR SANDBAGGING, NOT
18 APPROPRIATELY TETHERED TO EVIDENCE IN THIS CASE.

19 BUT AS YOU --

20 **MR. LEMON:** YOUR HONOR, IF I MAY. SORRY TO
21 INTERRUPT. I THINK IT EVEN MIGHT BE BROADER THAN THAT. AS
22 LONG AS WE ARE SPECULATING ABOUT WHAT THE EN BANC REVIEW MAY
23 BE, I THINK IT MAY ACTUALLY BE BROADER THAN WHETHER THE
24 REBUTTAL EVIDENCE WAS TETHERED TO EVIDENCE -- I AM SORRY --
25 REBUTTAL ARGUMENT WAS TETHERED TO EVIDENCE IN THE CASE, WHICH

1 WAS THE POINT OF THE DISSENT.

2 BUT THERE ARE OUT-OF-CIRCUIT OPINIONS THAT HAVE --
3 OTHER CIRCUITS HAVE EXPRESSLY HELD THAT REBUTTAL IS SUPPOSED
4 TO BE FOR JUST THAT: REBUTTAL. EVEN IF EVIDENCE HAS BEEN
5 INTRODUCED PREVIOUSLY IT IS NOT PROPER TO MAKE AN ARGUMENT
6 ABOUT THAT EVIDENCE FOR THE FIRST TIME IN REBUTTAL. SO I
7 SUSPECT THAT MIGHT BE WHERE THEY ARE GOING.

8 **THE COURT:** I AM ASSUMING THAT THE REBUTTAL WAS
9 ADDRESSED TO THE ARGUMENTS THAT WERE MADE IN MR. MALONEY'S
10 CLOSING ABOUT HIS TESTIMONY ABOUT THE EVENTS IN THE CASE AND
11 HIS CREDIBILITY, AND THEN MR. MILLER RESPONDED. SO I WAS
12 ASSUMING THAT ASPECT OF IT.

13 BUT, AS YOU MENTIONED, THE STANDARD HERE IS WHETHER
14 THERE IS A SUBSTANTIAL QUESTION, AND GIVEN A DISSENT AND EN
15 BANC REVIEW IT APPEARS THERE IS A SUBSTANTIAL QUESTION. THAT
16 IS WHY ULTIMATELY I GO BACK TO THE HARMLESS ERROR ANALYSIS,
17 WHICH GETS US BACK INTO THE EVIDENCE AND THE SPECIFIC MOTION
18 OF WHETHER OR NOT THE COURT OUGHT TO GRANT BOND PENDING
19 APPEAL.

20 AND HERE, I AM GOING TO RESPECTFULLY DENY THE
21 MOTION, BECAUSE WHEN I LOOK AT THE EVIDENCE ITSELF I DON'T
22 HAVE ANY QUESTION THAT MR. MALONEY COMMITTED THE CRIME AND HE
23 WAS PROPERLY CONVICTED. SO JUST FOCUSING ON THE MERITS AND
24 ASIDE FROM OTHER ISSUES THAT THE NINTH CIRCUIT MAY BE
25 INTERESTED IN AT A 30,000-FOOT STANDPOINT, PROSECUTORIAL

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1 CONDUCT AND THAT TYPE OF THING, I DON'T FIND THAT THE ELEMENTS
2 SET OUT IN 3143(B)(2), I BELIEVE, HAVE BEEN MET. SO I WOULD
3 RESPECTFULLY DENY THE MOTION.

4 **MR. LEMON:** ALL RIGHT. THANK YOU, YOUR HONOR.

5 **THE COURT:** THANK YOU, MR. LEMON.

6 **MR. LEMON:** YOUR HONOR, ACTUALLY IF I CAN APPROACH.
7 I GOT ANOTHER LETTER -- I SHOULD POINT OUT GLORIA AND HER SON
8 JONATHAN ARE HERE TO SHOW THEIR SUPPORT FOR MR. MALONEY TODAY.

9 **THE COURT:** YES. GOOD MORNING.

10 **MR. LEMON:** IF I CAN APPROACH.

11 I HAVE GIVEN MR. MILLER A COPY OF THIS. IT IS AN
12 UPDATED LETTER FROM HER CURRENT TREATING PHYSICIAN. IF I
13 COULD JUST FILE THIS.

14 **THE COURT:** YES.

15 **MR. LEMON:** THANK YOU.

16 **THE COURT:** THANK YOU VERY MUCH.

17 **MR. LEMON:** THANK YOU, YOUR HONOR.

18
19 * * *

20 I CERTIFY THAT THE FOREGOING IS A CORRECT
21 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS
IN THE ABOVE-ENTITLED MATTER.

22 S/LEEANN PENCE

7/17/2013

23 LEEANN PENCE, OFFICIAL COURT REPORTER DATE
24
25

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